

**HAMPTON ZONING BOARD OF ADJUSTMENT  
AMENDED MINUTES  
Thursday, September 20, 2007**

**Members Present:**

Tom McGuirk, Chairman  
Jack Lessard  
Bill O'Brien  
Bryan Provencal

**Others Present:**

Kevin Schultz, Building Inspector  
Joan Rice, Recording Secretary

Chairman McGuirk called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Chairman McGuirk introduced the members of the Board.

37-07 The continued Appeal by Colsak Investment, LLC of Administrative Decision for property located at 426 Winnacunnet Road re denial of a building permit. This property is located at Map 208, Lot 48 in a RA/RB zone.

Attorney Peter Laughlin said that he felt the applicant in this case is saying the Building Inspector made a mistake in denying the permit. He asked the Board to make a decision as to whether a mistake was made.

Attorney Jeff Spear and Brian Hayes came forward. Attorney Spear said that Colsak had approval from the Planning Board and then Mr. Schultz denied the permit.

Chairman McGuirk said the Zoning Board had approved slabs, not full basements; and 2 bedroom cottages, not 4 bedroom garrisons; which were included in the permit which was denied.

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Construction had been started without a building permit and Mr. Schultz halted it. Attorney Spear said that it is their position that another variance is not needed and the character of the use has not changed.

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Chairman McGuirk asked if there was any confusion when the applicant came to this Board and asked for slabs and then made an application to the Building Inspector for full basements. Attorney Spear said there was not.

Mr. O'Brien quoted the hearing of 3/16/06 where the request was for six 2-bedroom cottages on a slab.

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Chairman McGuirk said again that the Board had directed Colsak that it was slabs only.

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Mr. O'Brien said that when Colsak went to the Planning Board different drawings were presented and they did not come back to the Zoning Board with these significant changes.

Attorney Laughlin said that the applicant had approval for a slab from the Zoning Board and then went to the Planning Board with a different plan which also included two more bedrooms. They received approval from that Board and initiated construction without a building permit. Mr. Schultz halted construction, noticed that construction was not consistent with ZBA approval, and required the applicant to reappear before the ZBA.

After ZBA disapproval of the revised plan, they then went to Mr. Schultz for a permit. The question is, did Mr. Schultz make a mistake when he denied the permit. The applicant is saying the approval of the Planning Board supercedes the decision of the Zoning Board.

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Attorney Spear said that they feel the Planning Board's decision should stand and that is the essence of their appeal.

Attorney Susan Duprey of Devine Millimet came forward. She said she was representing Mr. Schultz. Attorney Duprey said that after the Planning Board made a decision, the Building Inspector denied the permit and then the applicant came back to the Zoning Board and that variance was denied. Attorney Duprey said it was her opinion that Mr. Schultz acted responsibly.

Moved by Mr. O'Brien, seconded by Mr. Provencal, to deny the appeal of Colsak Investments (37-07).

**VOTE: 4-0-0. Motion passed.**

39-07 The continued petition of MBA Realty Trust, thru John & Nancy McCaffery & Timothy & Linda Ahern, for property located at 22 Dover Avenue seeking relief from Articles 4.1.1, 4.5.1, 8.2.2, 8.2.3, 8.2.4, 8.2.5 and 8.2.6 to rebuild three units that were destroyed by fire. This property is located at Map 296, Lot 155 in a RB zone.

The applicants came forward and said that they have had the drawings redone.

Mr. O'Brien said there was no plot plan. He said there were stairs and a deck on the first floor intruding on the setback. The foundation is 13 feet from the boundary line and a driveway is shown that has to be 12 feet wide. This means the decks can only be one foot wide.

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Chairman McGuirk said the stairs were not needed.

**Moved** by Mr. O'Brien, seconded by Mr. Jack Lessard, to approve the drawings of 22 Dover Avenue as presented with the exception that the two decks on the east side be removed.

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Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

**VOTE: 4-0-0. Motion passed.**

43-07 The petition of Gay Gove, Trustee for property located at 7 Thornton Street seeking relief from Article 4.1.1 to replace existing home with a new home that will meet all of the dimensional requirements except for lot size. This property is located at Map 303, Lot 3 in a RA zone.

Attorney Peter Saari of Casassa & Ryan came forward. He went through the five criteria as presented in the application and said he felt the criteria had been met.

*Questions from the Board*

There were no questions from the Board.

*Comments from the Audience*

Jack Wilke, 16 Thornton, came forward and said he would like to see the building drawings. Mr. Schultz said that once a petition is made, a copy is available in his office to review before hearings.

Josephine Graff came forward. She said she is not opposed to the project itself, but is concerned about her view. Chairman McGuirk said the owner has the right to build and the view cannot be protected **unless it intrudes into the setbacks; this applicant is not seeking any setback variances.**

*Back to the Board*

**Moved** by Mr. Provencal, seconded by Mr. Jack Lessard, to grant Petition 43-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

**VOTE: 4-0-0. Motion passed.**

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- 44-07 An Appeal of Administrative Decision of the Building Inspector for denial of building permit for property located at 8 River Avenue. This property is located at Map 296, Lot 70 in a RB zone.

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June White and her attorney, Laurie Lacoste, Shaines & McEachern, came forward. Attorney Lacoste said the applicant had been before the Board previously and a variance was granted if a plot plan was submitted to the Building Inspector. However, Mr. Schultz denied the permit. Attorney Lacoste said the permit should have been granted and requested the Board to reverse the decision. She referenced RSA 674:33, I.(a) which states that the Zoning Board has the power to decide appeals if it is alleged there is an error made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16.

Mr. O'Brien pointed out that if you continue reading the statute it says that this Board has no jurisdiction over an order by the Board of Selectmen. He said if this is so, there is nothing that can be done by this Board.

Attorney Laughlin said that Mr. O'Brien was correct. The question is whether this Board has the authority to grant relief from the deed restrictions. Mr. Schultz denied the permit because he had no other choice. The Board does not have the authority to grant relief from the deeded setback.

Attorney Susan Duprey of Devine Millimet, representing Mr. Schultz, came forward. She said the variance from the Zoning Board was subject to the deed restrictions. Now the applicant is asking for a ruling on the deed restrictions. This should not be addressed here. It should be addressed in a courtroom. Attorney Duprey also said that Ms. White's attorney has taken the position that the Town has no authority to enforce these restrictions. Attorney Duprey said this appeal should be denied.

**Moved** by Mr. O'Brien, seconded by Mr. Lessard, to deny the appeal of June White (44-07) **since this Board has no jurisdiction over an order by the Board of selectmen, as stated in RSA 674:33, to have the Building Inspector enforce deed restrictions.**

**VOTE: 3-0-1 (McGuirk). Motion passed.**

- 45-07 The petition of Joseph & Sheila Cannava for property located at 17 Whitten Street, Unit 2 for relief from Articles 1.3 and 8.2.3 to raze and remove existing single story cottage and replace with a new two-story year round cottage with balcony. The new cottage will be in the same foot print as the existing cottage with the exception of the second floor balcony. This property is located at Map 295, Lot 41 in a BS zone.

Applicants Joseph and Sheila Cannava came forward. They went through the five criteria and feel they have satisfied the criteria.

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*Questions from the Board*

Mr. O'Brien asked if lot 31 and lot 49 were notified. Chairman McGuirk replied that they had been notified.

Mr. Schultz asked that when the applicants come in for a permit they bring a parking plan that is correct.

*Questions from the Audience*

There were no questions from the audience.

*Back to the Board*

**Moved** by Mr. Jack Lessard, seconded by Mr. Provencal, to approve Petition 45-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

**VOTE: 4-0-0. Motion passed.**

46-07 The petition of Michael Paolino for property located at 2 Fifth Street seeking relief from Article 1.3, 4.1 and 4.5.2 to construct a second floor deck at the front of the building, a stairway leading to that deck and a pergola over the front entry where the setbacks would not be met. This property is located at Map 210, Lot 22 in a RA zone.

Applicant Michael Paolino and Attorney Peter Saari came forward. Attorney Saari said that Mr. Paolino received a building permit for the plans that had been presented. The problem is that he assumed incorrectly that he could also add a 2<sup>nd</sup> floor deck. If he were just presenting this now, it would be different and they would hope that because he built it that the Board won't be prejudiced against his application. The plan is consistent with the neighborhood and cannot be moved.

*Questions from the Board*

Mr. Schultz said that the deck and stairs are in violation of the setback and are there without a permit. In response to a question from Chairman McGuirk, Mr. Schultz stated the entire deck was constructed within the 20 foot setback.

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*Comments from the Audience*

Steven Perry said he had a problem with the stairs. They are 26" from the boundary line and this is very close. He said he didn't have a problem with the deck.

*Back to the Board*

Chairman McGuirk read **several** letters in opposition to this petition. **He also indicated that there were several alternatives to building the deck in the setback area, e.g., over the existing rear deck, or in another area of the 100 foot deep lot.**

**Moved** by Mr. O'Brien, seconded by Mr. **Jack** Lessard, to deny Petition 46-07.

Chairman McGuirk asked the Board if the five criteria had been met. The Board agreed that they had not.

**VOTE: 3-0-1 (Provencal). Motion passed.**

47-07 The petition of Nana Beach Realty Trust, Andrew Guthrie, Trustee for property located at 30-36 River Avenue seeking relief from Articles 4.1.1, 4.5.1, 4.5.2, 4.5.3, 6.3.1, 8.2.3, 8.2.4 and 8.2.6 to construct a new two family duplex to replace the two units that were destroyed by fire in February 2007 and which did not conform to dimensional requirements, to allow the construction of a duplex on a lot containing 3,411 sq. ft. where 5,000 sq. ft. is required per dwelling unit, to allow a front yard setback of 4' where 20' is required, to allow a side yard setback of 4' from one side yard where 7' is required, to allow a rear yard setback of 5' where 10' is required, to allow one off site parking space, to allow a duplex which is approximately 10' from the existing dwelling on the lot, where a distance of 40' from all points is required, to allow a driveway which is approximately 2' away from the side of a building where 10' is required and to allow an open space buffer of 4 to 7 feet where 20' is required. This property is located at Map 296, Lot 157 in a RB zone.

David Guthrie and Attorney Sharon Somers came forward. Attorney Somers said since they were before the Board previously, they had carved off a foot from the rear yard setback and planned one good parking place rather than two substandard ones. The plot plan has been changed to reflect these changes. Attorney Somers went through the five criteria.

*Questions from the Board*

Mr. O'Brien asked if a variance from 6.3.9 (all parking onsite) would be needed. Mr. Schultz replied that if this variance is granted they would have all onsite parking.

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*Comments from the Audience*

Michael Roach said he believed this project would be an asset to the neighborhood.

John Christianson said that he supported this proposal

Walter Wise said the fact that Mr. Guthrie has implemented a sprinkler system is commendable and is protecting everyone.

June White said that everyone wants him to rebuild with his new plans and that the project will enhance the neighborhood.

*Back to the Board*

Mr. Jack Lessard read three letters in opposition to the project.

**Moved** by Mr. O'Brien, seconded by Mr. Provencal, to grant Petition 47-07.

Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

Chairman McGuirk said that the Board is not allowed to comment in regard to relief from deed restrictions.

**VOTE: 4-0-0. Motion passed.**

48-07 The petition of Lloyd Graves for property located on Towle Avenue seeking relief from Article 4.4.1 to construct a 2 family dwelling on a lot located partially in the Business zone and partially in Residence B zone, where the lot would have sufficient area (slightly less than 15,000 square feet) for two units in the RB zone but not the B zone. This property is located at Map 161, Lot 20 in a B/RB zone.

Lloyd Graves and Attorney Peter Saari came forward. Attorney Saari said that the problem is that in a business zone you cannot have single family. This proposal represents a compromise.

*Questions from the Board*

There were no questions from the Board.

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*Comments from the Audience*

Karen Toomey, 40 Towle Avenue, came forward. She said she was opposed to this project. The neighborhood is quiet and all single family homes. She said she felt her property would be devalued and there would be more congestion.

Maureen Kimball came forward and said she was opposed for the same reasons.

A pause occurred in consideration of **Petition 48-07**.

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At this time Attorney Craig Saloman, representing Robert and Robin Baskerville (**Petition 49-07**) came forward and asked that this petition be continued to a later date when there would be a five-member Board.

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**Moved** by Mr. O'Brien, seconded by Mr. Lessard, that Petition **49-07** be continued to next month and be first on the Agenda.

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**VOTE: 3-1 (Provencal)-0. Motion passed.**

The Board returned to consideration of **Petition 48-07**.

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**Moved** by Mr. **Jack** Lessard, seconded by Mr. Provencal, to grant Petition 48-07.

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Chairman McGuirk polled the Board on their acceptance of the five criteria. The Board was in agreement.

**VOTE: 3-0-1(McGuirk). Motion passed.**

**Moved** by Mr. **Jack** Lessard, seconded by Mr. Provencal, to adjourn the meeting. The motion passed by unanimous vote.

The meeting was adjourned at 10:30 p.m.

**Business Session**

Chairman McGuirk called the Business Session to order at 10:30 p.m.



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Chairman McGuirk read a letter from Jennifer Truesdale stating her resignation from the Zoning Board.

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**Moved** by Mr. O'Brien, seconded by Mr. Provencal, to appoint Jack Lessard to fill the remaining term vacated by Jennifer Truesdale until the March election.

**VOTE: 3-0-1 (Lessard). Motion passed.**

Chairman McGuirk made a recommendation that the alternate position not be filled until after the election.

Motion for Rehearing re Petition 24-07 – 76 Kings Highway

**The petition for rehearing was discussed in detail by the Board.**

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**Moved** by Mr. O'Brien, seconded by Mr. Provencal, to deny a rehearing on Petition 24-07.

**VOTE: 4-0-0. Motion passed.**

Motion for Rehearing re Petition 36-07 – 430 High Street

**The petition for rehearing was discussed in detail by the Board.**

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**Moved** by Mr. Lessard, seconded by Mr. O'Brien, to deny a rehearing on Petition 36-07.

**VOTE: 4-0-0. Motion passed.**

The Business Session was adjourned at 11:00 p.m.

Respectfully submitted,

Joan Rice  
Secretary